THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.23959 OF 2006

ORAL ORDER:

The petitioner is holding a licence in Form A-4 under the Andhra Pradesh Excise (Lease of Right of Selling by Shop and Conditions of License) Rules, 2005 (for short "the Rules"). This writ petition is filed aggrieved by the proceedings of the 1st respondent dated 28.10.2006, under which the petitioner was informed that the bank guarantee dated 24.6.2006 furnished by it for a sum of Rs.11,75,037/- was invoked, since it failed to remit the second instalment of lease amount before the stipulated time. Accordingly, the petitioner was called upon to submit a fresh bank guarantee for 1/6th of the lease amount valid up to November, 2007. The said notice is followed by a show cause notice dated 8.11.2006, under which the petitioner was called upon to show cause as to why the licence should not be canceled under Section 31(1) of the A.P. Excise Act, 1968, since it failed to submit the bank guarantee in terms of the proceedings dated 28.10.2006.

The impugned proceedings are questioned primarily on the ground that the second instalment falls due only on 1.11.2006 and, therefore, the action of the respondents in invoking the bank guarantee in the month of October itself is arbitrary and illegal.

Rule 19 of the Rules, which is relevant for the purpose of controversy involved in this writ petition runs as under:

> "……..
>
> 19(2) The licensee shall remit 2nd instalment sum equal to 1/6th of the lease amount on or before 20th of October and furnish a fresh bank guarantee for 1/6th of the lease amount valid for 9 months. The licensee shall remit 3rd instalment sum equal to 1/6th of the lease amount on or before 20th of February and furnish a fresh bank guarantee for 1/6th of the lease amount valid for 9 months. The licensee shall pay the 4th instalment sum equal to 1/6th of lease amount on or before 20th June (of the 1st year of the lease period) and furnish a bank guarantee equal to 1/6th of the lease amount. The licensee shall remit 5th instalment on or before 20th of October (of the

2nd year of the lease period), and 6th instalment on or before 20th February (of the 2nd year of the lease period)."

It is clear from the above Rule that the second instalment i.e., a sum equivalent to 1/6th of the lease amount is required to be remitted on or before 20.10.2006. Admittedly, the bank guarantee was invoked much thereafter, since the petitioner did not remit the second instalment. Hence, the contention of the petitioner cannot be accepted.

So far as consequential notice issued under Section 31(1) of the A.P. Excise Act, 1968 is concerned, it is stated that the petitioner has already submitted its explanation. That apart, the petitioner made a representation dated 13.11.2006 explaining to the respondents requesting to recall the order dated 28.10.2006.

As noted above, since the impugned action of the 1st respondent is in conformity with the statutory rules, no interference is warranted by this Court. However, it is made clear that this shall not preclude the respondents to consider the explanation offered by the petitioner as well as the representation dated 13.11.2006 and to take appropriate decision in accordance with law.

Subject to above, the writ petition is dismissed. No costs.

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(G. ROHINI, J.)

24th November, 2006.
Issue CC by tomorrow.

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.23959 OF 2006

24th November, 2006.

Between:

M/s R.R. Liquor Wines,
represented by its Proprietor M. Raja Reddy. .. Petitioner.

And

The Prohibition & Excise
Superintendent, Nampally,
Hyderabad and two others. .. Respondents.